

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JULY 8, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**Nos. 96-3430-CR-NM
96-3431-CR-NM**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEPHEN GREER,

DEFENDANT-APPELLANT.

APPEALS from judgments of the circuit court for Milwaukee County: BONNIE L. GORDON, Judge. *Affirmed.*

WEDEMEYER, P.J. Stephen Greer appeals from judgments convicting him of misdemeanor battery and disorderly conduct.¹ The state public

¹ This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

defender appointed Attorney David J. Pope as Greer's appellate counsel.² Attorney Pope served and filed a no merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and RULE 809.32(1), STATS., to which Greer responded. After an independent review of the records as mandated by *Anders*, we conclude that any further proceedings would lack arguable merit.

Greer pled guilty to misdemeanor battery, contrary to § 940.19(1), STATS., and to two counts of disorderly conduct, contrary to § 947.01, STATS.³ On the battery conviction, the trial court imposed a nine-month consecutive sentence to the House of Correction, and on the disorderly conduct convictions, it imposed two ninety-day sentences to run concurrent to one another, but consecutive to the nine-month sentence.⁴

The no merit report addresses whether Greer's pleas were entered knowingly, intelligently and voluntarily, and whether the trial court erroneously exercised its sentencing discretion. We agree with appellate counsel's description, analysis and conclusion that pursuing these issues would lack arguable merit.

Greer's sole challenge to the no merit report is his sentences. We address that issue to explain why challenging his sentences would lack arguable merit. Greer seeks sentence modification because he has taken the sentencing court's advice and his life has improved dramatically. He is employed and has

² Originally, Attorney Randall E. Paulson was appointed as Greer's appellate counsel. These cases were then reassigned to Attorney Pope.

³ The State agreed to amend two additional battery charges to two disorderly conduct charges in exchange for Greer's guilty pleas.

⁴ The nine-month sentence was imposed to run consecutive to any other sentence Greer was serving.

taken responsibility for his older child, in addition to contributing to the support of his fiancée, his younger child and his mother. As an alternative to the sentences imposed, he requests electronic monitoring with Huber privileges. *See* § 303.08, STATS.

Although Greer's recent efforts are admirable, this court merely reviews the sentences imposed; it is the trial court which modifies sentence. *See* § 973.19, STATS.; *State v. Meyer*, 150 Wis.2d 603, 608-09, 442 N.W.2d 483, 486 (Ct. App. 1989). However, to warrant sentence modification, Greer must persuade the trial court of the existence of a new factor. *See Rosado v. State*, 70 Wis.2d 280, 288, 234 N.W.2d 69, 73 (1975). Postconviction conduct does not constitute a new factor. *See State v. Solles*, 169 Wis.2d 566, 571, 485 N.W.2d 457, 459-60 (Ct. App. 1992); *State v. Krueger*, 119 Wis.2d 327, 335, 351 N.W.2d 738, 742 (Ct. App. 1984). Consequently, moving the trial court for sentence modification would lack arguable merit.

Challenging the sentences imposed also would lack arguable merit because our review of a sentence is limited to whether the trial court erroneously exercised its discretion. *State v. Larsen*, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary factors are the gravity of the offense, the character of the offender, and the need for public protection. *Id.* at 427, 415 N.W.2d at 541. The weight given to each factor is within the trial court's discretion. *See Cunningham v. State*, 76 Wis.2d 277, 282, 251 N.W.2d 65, 67-68 (1977).

At sentencing, the prosecutor recommended an eighteen-month term of probation conditioned upon serving three months in the House of Correction. Greer's counsel recommended electronic monitoring and Huber privileges. *See*

§ 303.08, STATS. However, the trial court rejected probation because it would unduly depreciate the seriousness of the offenses.

The trial court considered the gravity of the offense and was concerned that each charge was “very serious” and involved a similar course of conduct. Greer's conduct involves aggressive and physically abusive behavior in which he strikes his victims in the face and head. It also considered the character of the offender and emphasized that Greer’s history shows a propensity toward violence. It remarked that Greer is “a very angry and frustrated young man” who has been unable “to take charge and control of [his] life and address [his] issues.” It also considered protection of the public and deterrence. It imposed sentences to “[send] the message [that] this [domestic violence] has got to stop.” To challenge the trial court’s exercise of sentencing discretion would lack arguable merit.

Upon our independent review of the records, as mandated by *Anders* and RULE 809.32(3), STATS., we conclude that there are no other meritorious issues and that any further proceedings would lack arguable merit. Accordingly, we affirm the judgments of conviction and relieve Attorney David J. Pope of any further representation of Stephen Greer in these appeals.

By the Court.—Judgments affirmed.

